MALAYAN BANKING BHD

v.

CHARTEREFIELD CORPORATION SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
RAMLY ALI JC
[SUIT NO: D9-22-1745-2000]
8 MAY 2001

CIVIL PROCEDURE: *Amendment - Title of writ of summons - Application to amend name of plaintiff - Supporting affidavit deposed by solicitor - Whether a solicitor may depose an affidavit on behalf of litigant - Whether facts to be deposed contentious - Whether facts to be deposed must be from the deponent's knowledge - Rules of the High Court 1980, O. 41 r. 5 - Whether defendant's preliminary objection overruled - Whether application allowed*

The appellant ("plaintiff") had filed an application by way of summons-in-chambers (encl. 20) to substitute the name of Malayan Banking Berhad in the title of the writ of summon with Aseambankers Malaysia Berhad as the plaintiff. The said application was supported by an affidavit-in-support deposed by the solicitor for the appellant. Counsel for the defendant raised a preliminary objection that the affidavit-in-support of the application should not be deposed by the solicitors for the appellant, but must be deposed by the appellant itself, thus the affidavit was defective and the application should be dismissed. The senior assistant registrar had allowed the preliminary objection, rejected the affidavit and dismissed the appellant's application. Hence, the appellant appealed.

Held:

[1] A solicitor may depose an affidavit on behalf of the litigant if three conditions were fulfilled. The first condition is that the facts to be deposed must not be contentious or disputed question of facts. The name of the plaintiff in the title of the writ was not a contentious issue as far as the defendant was concerned. It was not part of the statement of claim thus the statement of claim remains unchanged. Furthermore, the appellant had explained that Malayan Banking Berhad is the holding company of Aseambankers Malaysia Berhad.

[2] The second condition was that the facts to be deposed must be from the deponent's knowledge. The plaintiff or any appropriate officer of the plaintiff would not be in the position to know that the name of the plaintiff was wrongly written in the title of the writ. It was the solicitor

who prepared the documentation and thus it was also the solicitor who knew whether the documentation was properly prepared or not. Order 41 r. 5 of the Rules of the High Court 1980 requires that an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

[3] The third condition to be fulfilled was that the deponent must have been authorised by the plaintiff to depose the affidavit. In the present case, the real plaintiff was Aseambankers Malaysia Berhad, ie the subsidiary of Malayan Banking Berhad. The deponent was the solicitor acting for the plaintiff. What the deponent had stated in para. 2 of the said affidavit-in-support had shown to the court that the third condition had also been fulfilled.

[4] The authorities cited by the defendant have been considered and it was concluded that these cases could be distinguished from this present case. Thus, the respondent's preliminary objection could not stand and was thus overruled.

[5] The applicant need not satisfy the court with the principle as laid down by the Federal Court in *Yamaha Motor Co Ltd* if the amendment was plainly and obviously trivial in nature. Therefore, the application in encl. 20 should be allowed.

[Appeal allowed.]

Case(s) referred to:
Kaplands Sdn Bhd v. Lee Chin Cheng Dengkil Oil Palm Plantations Sdn Bhd [2000] 4 CLJ 281 ***(refd)***
Million Group Credit Sdn Bhd. v. Lee Shoo Khoon & Ors [1985] 1 CLJ 181 ***(refd)***
Sabah Bank Bhd v. Pemborong Keningau Sdn Bhd [1991] 3 CLJ 2590 ***(refd)***
Samsuri Welch Abdullah v. Ong Liang Hee [1999] 3 AMR 2955 ***(refd)***
Seng Huat Hang Sdn Bhd v. Chee Seng & Co Sdn Bhd [1986] 1 MLJ 348 ***(refd)***
Tan Pow & Anak-Anak Sdn Bhd v. Pelasari Sdn Bhd [1999] 1 CLJ 165 ***(refd)***
Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd [1983] 1 CLJ 191 ***(refd)***

Legislation referred to:
Legal Profession (Practice and Etiquette) Rules 1978, r. 28
Rules of the High Court 1980, O. 20 r. 5, O. 41 r. 5

For the appellant - N Segaran; M/s Shearn Dalemore & Co
For the respondent - Wan Shahrizal; M/s Wan Shahrizal, Hari & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Ramly Ali JC:

Introduction

This is an appeal by the appellant (plaintiff) to the judge-in-chambers against the decision of the learned Senior Assistant Registrar (SAR) made on 4 April 2001 whereby the learned SAR had allowed the defendant's preliminary objection and subsequently dismissed the appellant's application to amend the name of the plaintiff in the writ of summon (encl. 1) by way of summon-in-chambers dated 16 February 2001 (encl. 20).

Originally the name of the plaintiff cited in the title of the writ was "Malayan Banking Berhad". Subsequently, the appellant filed an application by way of a summon-in-chambers dated 16 February 2001 (encl. 20) to substitute the name "Malayan Banking Berhad" with "Aseambankers Malaysia Berhad" as the plaintiff. The said application was supported by an affidavit-in-support deposed by Shaikh Abdul Saleem on 15 February 2001 (encl. 21). The said Shaikh Abdul Saleem is an advocate and solicitor attached to Tetuan Shearn Dalemore & Co, solicitors for the plaintiff (appellant). When the said application came up for hearing on 4 April 2001 before the learned SAR, the counsel for the defendant raised a preliminary objection that the affidavit-in-support of the application should not be deposed by the solicitors for the appellant, but must be deposed by the appellant itself. The defendant contended that since the affidavit-in-support of the appellant's application was deposed by its solicitors, then the affidavit is defective and thus the application should be dismissed. The learned SAR rejected the affidavit and dismissed the appellants application and hence the appeal.

Appellant's Submissions

The learned counsel for the appellant submitted that the application (as in encl. 20) to amend the name of the plaintiff in the title of the writ (encl. 1) from "Malayan Banking Berhad" to "Aseambankers Malaysia Berhad" is not a contentious matter. It is purely based on clerical error, on part of the solicitors office in preparing the writ. There is nothing to be disputed on the issue. As such it is only proper for the solicitors, who was responsible to prepare the relevant papers to be filed in respect of the action, to depose the said affidavit-in-support. The appellant also submitted that the said clerical error was only in respect of the title of the writ but not the statement of claim. It was also argued by the appellant that the error was not intentional and did not prejudice the defendant as the name of the plaintiff as stated in the notice of demand was "Aseambanker Malaysia Berhad". The appellant is willing to bear the costs of the application before SAR and this appeal, to be paid to the respondent.

Respondent's Submission

The respondent, on the other hand, submitted that the amendment to be applied by the appellant (encl. 20) involved a question of fact. As such the affidavit-in-support must be deposed by a representative of the plaintiff, who has knowledge of the matters, but not the solicitors. To support it's submission the respondent cited the following authorities:

i) *Kaplands Sdn Bhd v. Lee Chin Cheng Dengkil Oil Palm Plantations Sdn Bhd* [2000] 4 CLJ 281

ii) *Tan Pow & Anak-Anak Sdn Bhd v. Pelasari Sdn Bhd* [1999] 1 CLJ 165

iii) *Sabah Bank Bhd v. Pemborong Keningau Sdn Bhd* [1991] 3 CLJ 2590;

iv) *Samsuri Welch Abdullah v. Ong Liang Hee* [1999] 3 AMR 2955.

For the purpose of this appeal, which shall be by way of re-hearing, I shall first consider and determine the issues raised in the preliminary objection by the respondent and subsequently the application of the appellant as in encl. 20.

Preliminary Objection By The Respondent

The only question to be asked for the preliminary objection is: Can a solicitor depose an affidavit for and on behalf of a litigant?

There is no express provisions of law relating to this matter. There is also no provision of law to say that such as affidavit could not be accepted by court. Rule 28, of the Legal Profession (Practice and Etiquette) Rules 1978, says that a solicitor should not appear as such in a matter in which he has reason to believe that he will be a **witness in respect of a material and disputed question of fact**. In the case of *Million Group Credit Sdn Bhd v. Lee Shoo Khoon & Ors* [1985] 1 CLJ 181, M Shankar J (as he was then) had said:

> A second point which needs to be emphasized is that the practice of solicitors themselves filing **contentious affidavits** in pending applications should be discouraged. The parties are the litigants and it is they who should be giving evidence.

In *Seng Huat Hang Sdn Bhd v. Chee Seng & Co Sdn Bhd* [1986] 1 MLJ 348 Edgar Joseph Jr J (as he was then) said (at p. 350):

> With respect, in matters where **disputed questions of facts** are involved, it is for the parties and not their solicitors to affirm affidavits relating thereto.

Recently, Mohd Hishamudin J in the case of *Kaplands Sdn Bhd v. Lee Chin Cheng Dengkil Oil Palm Plantations Sdn Bhd* [2000] 4 CLJ 281, had said:

> With respect, where disputed questions of fact are involved, I think the better view on the issue as to whether or not a solicitor could depose an affidavit on behalf of a litigant would be that as expressed by Shankar J in **Million Group** and by Edgar Joseph Jr J in **Seng Huat Hang**. In the case before me, in the light of the contents of the defendants affidavit, I am satisfied that there were disputed question of fact.

In another case, *Sabah Bank Bhd v. Pemborong Keningau Sdn Bhd & Ors* [1991] 3 CLJ 2590, it was held that:

> Affidavits are personal to those who depose them and if statements therein are incorrect, the deponents must be liable (and, in appropriate cases, punishable under the Penal Code). So it is not the business of anymore else unless **he is so authorised**, to depose to fact and much less for counsel to include **contentious materials** in their affidavits.

In *Samsuri Welch Abdullah v. Ong Liang Hee & Anor* [1999] 3 AMR 2955 Mohammed Kamil Awang J, ruled that, notwithstanding having been engaged by the plaintiff or having had personal conduct of the matter, the affidavits that were affirmed by the counsel in support of the application, were filed in contravention of O. 41 r. 5 of the RHC, which reads:

> 5(1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38 rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.
>
> (2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

In that case (*Samsuri Welch*) the court rejected the affidavit deposed by the solicitor on behalf of the plaintiff because the said affidavit sought to introduce in evidence various photographs, by way of exhibits to the said affidavits.

Based on the above cited cases, I am of the view that a solicitor may depose an affidavit on behalf of the litigant if all the following conditions are fulfilled:

i) the facts to be deposed must not be contentious or disputed question of facts;

ii) the facts to be deposed must be from his knowledge (if the affidavit is for the purpose of being used in interlocutory proceedings, it may contain statements of information or belief with sources and grounds thereof); and

iii) he is authorised to depose the affidavit by the litigant.

In our present case, the plaintiff is seeking leave to amend the name of the plaintiff from "Malayan Banking Berhad" to "Aseambankers Malaysia Berhad" appearing in the title of the action in the front page of the writ (encl. 1). The

original statement of claim still remain. No amendment to be made to it. The contents of the affidavit-in-support (encl. 20) by the plaintiff's solicitor contained reasons why such application is necessary i.e. "kesilapan ini berpunca dari kesilapan kekeranian di pihak kami di mana perkataan "Malayan Banking Berhad" telah dimasukkan sebagai nama plaintiff yang sepatutnya "Aseambankers Malaysia Berhad" (para. 6 of the affidavit). At para. 7 of the affidavit, it is clearly explained that:

> 7. Kesilapan kekeranian ini hanya melibatkan kepada Writ Saman bertarikh 14.9.2000 tersebut dan tidak melibatkan kandungan Penyataan Tuntutan yang telah disediakan berdasarkan bahawa Plaintiff adalah Aseambankers Malaysia Berhad dan bukannya Malayan Banking Berhad. Kesilapan ini juga adalah kerana sedikit kekeliruan kekeranian yang mana arahan untuk prosiding ini diterima daripada Malayan Banking Berhad yang merupakan syarikat induk bagi Aseambankers Malaysia Berhad tetapi kemudahan perbankan telah diberikan oleh Aseambankers Malaysia Berhad. Sesalinan Perjanjian Kemudahan bertarikh 13.11.95 dilampirkan di sini dan ditandakan sebagai eksibit "SAS-1".

The rest of the said affidavit deals with depositions that the amendment does not prejudice and not intended to cause confusion or to mislead the defendant. I am of the opinion that the name of the plaintiff in the title of the writ is not a contentious issue as far as the defendant is concerned. It is not part of the statement of claim. If it is part of the statement of claim then it may be said to be contentious because it may change the structure of the evidence to be adduced during trial. In our present case the statement of claim remained unchanged. Of course, the defendant tried to dispute the matter, but to my mind, the dispute is unreasonable. Further more the appellant had explained that "Malayan Banking Berhad" is the holding company of "Asemanbankers Malaysia Berhad". Thus, I conclude that the appellant had fulfilled the first condition narrated above.

On the second condition, it is not disputed that the said deponent to the affidavit-in-support is the solicitor handling the matter. In para. 2 thereof, he had deposed that:

> Saya adalah peguamcara yang mengendalikan perkara ini bagi Plaintiff dan diberi kuasa untuk membuat dan mengikrar Afidavit ini bagi pihaknya. Kecuali di mana kelihatan disebaliknya fakta-fakta yang dideposkan dalam affidavit ini selepas ini adalah daripada pengetahuan saya sendiri atau diambil daripada rekod-rekod plaintif dan daripada suratcara-suratcara Mahkamah.

The issue that need to be amended in the application entirely relates to the preparation of the writ to be filed in court. It is common knowledge that, this job is to be done by the solicitors after the plaintiff had handed over the matter to them for litigation in court. Thus, the only person who has personal knowledge about the matter is the solicitor concerned. The plaintiff or any

appropriate officer of the plaintiff would not be in the position to know about the fact that the name of the plaintiff was wrongly written in the title of the writ. It is the solicitor who prepared the documentation and thus it is also the solicitor who knows whether the documentation was properly prepared or not, not the plaintiff. It is wrong and improper to get any of the plaintiff's officer (who has no personal knowledge about the particular issue) to depose the affidavit-in-support of the said application. Order 41 r. 5 of the Rules of the High Court (RHC) 1980 requires that an affidavit may contain **only such facts as the deponent is able of his own knowledge to prove**. As such, I am satisfied that the second condition is also fulfilled.

The third condition to be fulfilled is that the deponent must have been authorised by the plaintiff to depose the affidavit. What the deponent need to do to satisfy this condition is to depose in the affidavit that he was authorised by the plaintiff to do so. In our present case the 'real' plaintiff is 'Aseambankers Malaysia Berhad' i.e. the subsidiary of Malayan Banking Berhad. The deponent is the solicitor acting for the plaintiff i.e. Aseambankers Malaysia Berhad. In para. 2 of the said affidavit-in-support the deponent had stated that: "Saya adalah peguamcara yang mengendalikan perkara ini bagi plaintif dan diberi kuasa untuk membuat dan mengikrarkan afidavit ini bagi pihaknya". To me, with this assertion, the third condition had also been fulfilled.

Authorities Cited By The Respondent

Now I shall deal with the authorities cited by the defendant. I have considered all those cases cited and concluded that these cases could be distinguished from our present one.

In *Kaplands* case *(supra)*, the plaintiff applied for leave to amend its **statement of claim**, supported by an affidavit deposed by the plaintiff's solicitors. The paragraph in the statement of claim intended to be amended was para. 10 i.e. by deleting sub-paras (b) and (c) to the said para. 10. It is obvious that the amendment involved the content of pleadings i.e. the statement of claim (not a mere title to the writ as in our present case). It involved substantive evidence of facts on merit of the case, where only the plaintiff or its appropriate officer has knowledge about, but not the solicitors. The effect of the amendment in that case would affect the character of the plaintiff's case against the defendant. The judge in that case was correct when he concluded that the facts in question were contentious and there were disputed question of facts. Thus the affidavit was rejected.

In *Tan Pow & Anak-Anak Sdn Bhd (supra)*, the court had also rejected the affidavit deposed by the plaintiff's solicitors on the ground that the said affidavit was meant to reply the defendant's allegations in its affidavit and in

effect to explain that there was no delay that had occurred and also challenged the depositions of the defendant. Again I think the court was correct in rejecting the affidavit because the content obviously involved some contentious materials and disputed questions of facts.

In *Sabah Bank*'s case *(supra)* the same type of affidavit was also rejected by the court on the grounds that it did not say that the counsel was authorised to depose the affidavit on behalf of the 4th defendant and also that the affidavit involved some contentious facts, for example, in respect of para. 5(3) of the affidavit.

In the last case cited by the respondent, i.e. *Samsuri Welch (supra)*, again the same type of affidavit was rejected by the court on the ground that the affidavits were in contravention of Order 41 r. 5 (RHC). In that case the affidavit was to be used for the purpose of an application for summary judgment in relation to the plaintiff's claim for *inter alia*, damages for trespass and nuisance, purportedly committed by the 2nd defendant. The affidavit also sought to adduce in evidence of various photographs, by way of exhibits to the said affidavits. Again, to my mind, the said affidavit was rightly rejected because it tended to introduce new evidence (i.e. the photographs) that went into the merit of the plaintiffs claim, where the solicitors had no knowledge of.

Decision On Preliminary Objection

Based on the above consideration, I am satisfied that the respondent's preliminary objection could not stand and thus overruled.

Appellant's Applications For Amendment (Encl. 20)

I shall now deal with the applicant's application (encl. 20) to amend the title of the writ dated 14 September 2000 to delete the word "Malayan Banking Berhad" as the name of plaintiff and to substitute it with "Aseambankers Malaysia Berhad". The application made under O. 20 r. 5 of the RHC, is supported by an affidavit-in-support affirmed by Shaikh Abdul Saleem, solicitor for the applicant (encl. 21). The grounds for the application are as appear in paras. 4 - 12 of the affidavit:

> 4. Saya sesungguhnya percaya bahawa Writ Saman tersebut mempunyai kesilapan yang telah dibuat dengan tidak sengaja dan perlu dipinda supaya ia mencerminkan posisi sebenar di antara pihak-pihak yang berkenaan.
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> 5. Saya merujuk pada nama Plaintif di dalam perkara ini dan menyatakan bahawa ianya merupakan suatu kesilapan yang telah dibuat kerana Malayan Banking Berhad bukanlah Plaintif bagi tindakan ini. Plaintif bagi tindakan ini adalah sebenarnya Asemanbankers Malaysia Berhad.

6. Kesilapan ini adalah berpunca dan kesilapan di pihak kami di mana perkataan "Malayan Banking Berhad" telah dimasukkan sebagai nama Plaintif yang sepatutnya "Aseambankers Malaysia Berhad". Sesalinan Writ Saman Terpinda yang dicadangkan dilampirkan di sini bersama-sama permohonan ini.

7. Kesilapan kekeranian mi hanya melibatkan Writ Saman bertarikh 14.9.2000 tersebut dan tidak melibatkan kandungan Penyatan Tuntutan yang telah disediakan berdasarkan bahawa Plaintif adalah Aseambankers Malaysia Berhad dan bukannya Malayan Banking Malaysia Berhad. Kesilapan ini juga adalah kerana sedikit kekeliruan keranian yang mana arahan untuk prosiding ini diterima daripada Malayan Banking Berhad yang merupakan syarikat induk bagi Aseambankers Malaysia Berhad tetapi kemudahan perbankan telah diberikan oleh Asemanbankers Malaysia Berhad. Sesalinan Perjanjian Kemudahan bertarikh 13.11.1995 dilampirkan disini dan ditandakan sebagai eksibit "SAS-1".

8. Saya sesungguhnya percaya bahawa kesilapan ini adalah tidak disengajakan dan sesungguhnya tidak memprejudiskan pihak Defendan kerana segala rujukan di dalam penyataan tuntutan adalah kepada Aseambankers Malaysia Berhad dan bukannya Malayan Banking Berhad, terutamanya surat tuntutan yang dirujuk di dalam perenggan 13 Penyataan Tuntutan yang telah dihantar oleh Tetuan Shearn Delamore & Co. kepada Defendan adalah bagi pihak Aseambankers Malaysia Berhad. Sesalinan surat tuntutan tersebut dilampirkan disini sebagai eksibit "SAS-2".

9. Saya juga sesunguhnya percaya bahawa kesilapan ini tidak memprejudiskan dan tidak mengelirukan pihak Defendan kerana mereka pada semua masa mengetahui akan kedudukan Aseambankers Malaysia Berhad sebagai Plaintif di dalam tindakan ini. Ini dapat dilihat di dalam surat daripada Defendan kepada Tetuan Shearn Delamore & Co. bertarikh 22.8.2000 yang telah disalinan kepada pihak Malayan Banking Berhad. Sesalinan surat bertarikh 22.8.2000 tersebut dilampirkan disini dan ditandakan sebagai eksibit "SAS-3".

10. Saya sesungguhnya percaya bahawa kesilapan ini adalah kesilapan yang tulen dan telah dbuat secara tidak sengaja tanpa niat untuk mengelirukan pihak Defendan.

11. Oleh yang demikian, saya sesungguhnya percaya bahawa Writ Saman tersebut perlu dipinda sepertimana yang ditunjukkan dengan warna merah dalam salinan yang dilampirkan dengan permohonan ini.

12. Saya sesungguhnya percaya bahawa pindaan yang dicadangkan ini tidak akan memudaratkan pihak Defendan kepada keadaan dimana ianya tidak boleh digantikan dengan kos dan/ atau menukarkan sifat tuntutan Plaintif tetapi adalah perlu untuk mencerminkan tuntutan yang betul terhadap Defendan.

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The Relevant Laws

In *Kaplands* case, Mohd Hishamudin J held that:

> Where a party applies to the court for leave to amend his pleading pursuant to O. 20 r. 5 of the Rules of the High Court 1980, he must, except in cases where the amendment is plainly and obviously trivial in nature or where there is no opposition to the application, satisfy the court that the application is in compliance with to the principle as laid down by the Federal Court in *Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd* [1983] 1 CLJ 191.

In *Yamaha Motor Co (supra)*, Mohd Azmi FCJ, in delivering the judgment of the Federal Court ruled (at pp. 214-215)

> The general principle is that the court will allow such amendments as will cause no injustice to the other parties. Three basic questions should be considered to determine whether injustice would or would not result: (i) whether the application is *bona fide*; (ii) whether the prejudice caused to the other side can be compensated by costs; and iii) whether the amendment would not in effect turn the suit from one character into a suit of another and inconsistent character (see *Mallal's Supreme Court Practice* at p. 342).

In our present case, I fully agree with Mohd Hishamudin J in *Kaplands* case *(supra)*, that the applicant need not satisfy the court with the principle as laid down by the Federal Court in *Yamaha Motor Co Ltd (supra)*, if the amendment is plainly and obviously trivial in nature. In our case, I feel that the application of the appellant to amend the title of the writ is plainly and obviously trivial in nature. Thus, it can be allowed without having to satisfy the principle laid down in *Yamaha Motor Co Ltd (supra)*.

Assuming I am wrong in coming to this conclusion, I shall now, alternatively, consider the merit of the appellants application to see whether they comply with the principles laid down in *Yamaha Motor Co Ltd (supra)*.

1st Principle: Whether The Application Is *Bona Fide*?

Reading the affidavit-in-support of the application. I am satisfied that the application made is *bona fide*. It arises from clerical error on part of the applicant's solicitors. The error was not intentionally done to confuse or mislead the respondent. As stated in para. 4 of the affidavit-in-support, Malayan Banking Berhad is the holding company of Aseambankers Malaysia Berhad; and it was Malayan Banking Berhad that actually gave instruction to take necessary legal proceeding against the respondent for loan granted by Aseambankers Malaysia Berhad. So in preparing for the writ, the solicitors admitted that it was his error in writing Malayan Banking Berhad as the plaintiff where in actual fact, based on the relevant loan documentations, the plaintiff should be Aseambankers Malaysia Berhad. So the amendment is to give a true picture as to the parties involved. The court is willing to accept the reasoning as *bona fide*.

2nd Principle: Whether The Prejudice Caused To The Other Side Can Be Compensated By Costs

The respondents argued that the amendment will cause prejudice to the respondent in the sense that i) looking at the front page of the writ (i.e. in the title) it appears as if Malayan Banking Berhad is the one which had taken action against the respondent; ii) the claim involved a large sum of money i.e. RM23 million; iii) it had caused confusion to the respondent because the respondent had never taken any loan or banking facility from Malayan Banking Berhad; and iv) the writ had caused embarrassment to the respondent among the corporate sector.

Looking at all the effects listed above, I am of the view that the prejudicial effects listed by the respondents are not real. I makes no different in those effects whether the plaintiff is Malayan Banking Berhad or Aseambankers Malaysia Berhad. In fact, with the amendment, all the doubt or prejudicial effect which had been created by the original title in the writ would be cleared and a true picture as to the parties concerned would be in place. If at all the respondent is prejudiced by the amendment, it can always be compensated by costs. The appellant had clearly indicated that they are willing to pay the costs to the respondent.

3rd Principle: Whether The Amendment Would Not In Effect Turn The Suit From One Character Into A Suit Of Another and Inconsistent Character

The amendment is only to change the name of the plaintiff from "Malayan Banking Berhad" to "Aseambankers Malaysia Berhad" in the title of the writ (front page). That's all. It does not involve any alteration to the statement of claim at all. The character or the nature of the claim against the respondent is still the same. Thus the question whether the amendment in effect would turn the suit from one character into a suit of another and inconsistent character, does not arise at all in this case.

Decision On Encl. 20

Applying the above principles as laid dawn by the Federal Court in *Yamaha Motor Co Ltd (supra)*, I am fully satisfied that the application had complied with those principles. Therefore, I have no hesitation to hold that the application as in encl. 20 should be allowed.

In the premise. I allow the appellant's appeal as in encl. 27 with costs to be paid by the appellant to the respondent here as well as proceeding before the SAR. The decision of the learned SAR dated 4 April 2001 is to be set aside.